

**State of California**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF  
PROPOSED REGULATIONS §§ 9789.10, 9789.11(c)**  
**(Adoption of Emergency Regulations)**

**Subject Matter of Regulations: Workers' Compensation –  
Official Medical Fee Schedule – Services Rendered After January 1, 2004**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 9789.11(c)**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 59, 129, 129.5, 133, 5307.1, 5307.3, and 5318 proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9789.10. Physician Services - Definitions.

Section 9789.11(c) Physician Services Rendered After January 1, 2004

Note that modifications to other portions of the Official Medical Fee Schedule proposed regulations are already in a 15-day comment period which is ending on April 2, 2004.

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION  
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Marcela Reyes, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on, April 14, 2004**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Marcela Reyes, at (415) 703-4600 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations, Sections 9789.10 (Physician Services – Definitions), and 9789.11(c) (Physician Services Rendered After January 1, 2004).

## **DOCUMENTS SUPPORTING THE RULEMAKING FILE**

CMS-1372-IFC, Federal Register, Volume 69, No. 4 (January 7, 2004), pages 1117 through 1242.

CMS Manual System, Pub. 100-04 Medicare Claims Processing, Transmittal 105 (February 20, 2004).

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for 45-Day Comment Period:**

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

### **Proposed Text Noticed for This 15-Day Comment Period on Modified Text:**

Deletions from the amended regulatory text, as proposed on January 12, 2004, are indicated by double strike-through under-line, thus: ~~deleted language~~.

Additions to the amended regulatory text, as proposed on January 12, 2004, are indicated by a double underline, thus: added language.

## **SUMMARY OF PROPOSED CHANGES**

### **Modifications to Section 9789.10. Physician Services - Definitions.**

Subdivision (d) is modified to add a reference to Physicians' Current Procedural Terminology (CPT) 1994, as it is used in the coding structure of the OMFS 2003 as well as the 1997 CPT.

Subdivision (e) is modified to define "Medicare rate" as the physician fee schedule rate derived from the Resource Based Relative Value Scale and related data, adopted for the Calendar Year 2004, and published in the Federal Register on January 7, 2004, Volume 69, No. 4, pages 1117 through 1242 (CMS-1372-IFC), as amended by CMS Manual System, Pub. 100-04 Medicare Claims Processing, Transmittal 105 (February 20, 2004). The Medicare rate for each procedure is derived by the Administrative Director utilizing the non-facility rate (or facility rate if no non-facility rate exists), and a weighted average geographic adjustment factor of 1.063.

### **Modifications to Section 9789.11(c) Physician Services – Definition**

Subdivision (b) is modified to clarify that procedures reimbursed under OMFS 2003 rate below the Medicare rate will not be reduced.

Subdivision (c) incorporates by reference "Table A - OMFS Physician Services Fees for Services Rendered after January 1, 2004." The table proposed in the 45 day comment period is replaced by a new proposed Table A. This new table, which sets forth individual procedure codes from the OMFS 2003 with each code's corresponding relative value, conversion factor, percentage reduction calculation (between 0 and 5.0%) mandated by Section 9789.11(b), and maximum reimbursable fee, is updated to reflect Medicare's adjusted 2004 Relative Value Units for the National Physician Fee Schedule, as mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173. The new Table A also: includes codes that were inadvertently omitted from the Table A proposed on January 12, 2004, corrects clerical errors, includes missing codes descriptions, and revises reductions proposed for codes listed under the Physical Medicine section of the 2003 OMFS. Many of the physical medicine codes that were previously reduced have been excluded from the reduction. This was done because reevaluation indicated that reimbursement for those codes under OMFS 2003 was below the Medicare rate.

Subdivision (e) adds language to clarify the applicability the fee schedule for pathology and laboratory services.